

REMARKS

The above Office action and references cited therein have been carefully studied with respect to the instant application for patent. A Petition for an additional three (3) month extension of time to respond to the above Office action and the appropriate fee has been filed concurrently herewith. In light of the above amendments and remarks set forth herein, it is believed that the claimed invention in the instant application now more clearly defines over the cited prior art and is in proper condition for allowance. Therefore, early reconsideration and allowance thereof is respectfully requested.

Claim Rejections – 35 USC § 103

In the above Office action, Claims 1, 3-56 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Yerazunis et al. (US PG-Pub. 2003/0026449 A1), in further view of Faris (US 6,002,518). For the following reasons, the Applicant respectfully traverses the above rejection.

I. Yerazunis et al. - Patent Application Publication (US PG-Pub. 2003/0026449 A1)

While Yerazunis et al. does teach a means of confidential viewing, it is important to point out that Yerazunis et al. does not teach “an apparatus for confidential viewing of a fundamental image utilizing **spatial multiplexing** image modification,” as asserted in the above Office action. In Yerazunis et al., multiplexing of the respective image components is done strictly on the basis of “**time**,” and the device disclosed in Yerazunis et al. is not easily converted from time multiplexing to spatial. The present invention has the distinct advantage over the device shown in Yerazunis et al. in that by utilizing spatial multiplexing, there is virtually no visible flicker, no requirement for a fast display, and the concept can even be used statically, such as in print applications.

Yerazunis et al. makes no mention, whatsoever, of spatially multiplexing fundamental and inverse image components, where both the fundamental and inverse image components are displayed simultaneously, albeit spatially shifted relative to one another during the same display frame. In fact, this is not possible using the device in Yerazunis et al., since “spatial” multiplexing requires both fundamental and inverse image components to be displayed simultaneously, making it impossible to decipher the fundamental image using the optical shutter device 140 described in Yerazunis et al. To “spatially” multiplex the fundamental and inverse image components in Yerazunis et al. would render the device in Yerazunis et al. useless for its intended purpose.

II. The Faris Patent (US 6,002,518)

While Faris does disclose two spatially multiplexed images having two different polarization states, for purposes of 3D viewing, it specifically requires that each image be separately viewable at all times by separate eyes. Consequently, nowhere is it disclosed or suggested in Faris that a single polarization state should ever be used to view one image through both eyes simultaneously. In fact, to do this would completely destroy the intended function of the device in Faris, and as such, it cannot possibly make this suggestion or provide any motivation to do so. Because the device in Faris is intended for 3D viewing, its specific purpose is to provide means for **both** images to be viewed at all times, but through different eyes. It is respectfully submitted that this is the very antithesis of what the applicant herein is seeking to accomplish.

III. It is Improper to Combine Yerazunis et al. with Faris under 35 USC § 103(a)

(A) Combining Yerazunis et al. With Faris Renders Yerazunis et al. Inoperable

It is respectfully submitted that combining the teachings of Yerezunis et al. with Faris does not meet the claimed invention in the present application, and actually renders Yerezunis et al. inoperable for its intended purpose. As noted above, Yerezunis et al. operates on the principle of “time” multiplexing, where the fundamental and inverse image components are displayed separately over time in different display frames, such that neither are ever simultaneously displayed in the same frame. Applying Faris to Yerezunis et al. to “spatially” arrange the fundamental and inverse image components for simultaneous display adjacent one another, with differing polar orientations, destroys the ability of the device in Yerezunis et al. to separate the fundamental and inverse image components. Using the intended optical shutter device described in Yerezunis et al. (with an FLC rotator that switches polarization rotation from $+\pi/4$ to $-\pi/4$), both fundamental and inverse image components would be visible at all times, thereby canceling each other and always generating a neutral featureless image.

Utilizing the polarized viewing glasses of Faris does not resolve this deficiency. It is well established that it is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448 (CAFC 1986), citing *In re Wesslau*, 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965); *see also In re Mercer*, 515 F.2d 1161, 1165-66, 185 USPQ 774, 778 (CCPA 1975).

The polarized viewing glasses in Faris are specifically designed for “3D” viewing of both images together at the same time, one image with each eye. It is not the intended purpose of such glasses, nor are they designed for the purpose of separating one image from another for viewing with both eyes simultaneously. Indeed, the teaching of Faris is the very antithesis of what is intended in

the present application. Fairly applying Faris to Yerazunis et al. would require the use of the viewing glasses in the intended manner and as disclosed in Faris; any other usage would and could only be the result of the use of impermissible hindsight reconstruction after viewing the contents of the present application; such hindsight reconstruction is clearly improper. *See, e.g., W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

Accordingly, it is not proper to extract the “spatial” multiplexing concept of Faris to the exclusion of the use of the viewing glasses in the intended manner as fairly suggested therein. Therefore, applying Faris to Yerazunis et al. would result in an inoperable system, in that both the fundamental and inverse image components would still be visible at all times, thus canceling one another and making it impossible to extract the fundamental image components. As such, combining the teachings of Yerazunis et al. with Faris fails to meet the limitations of the claimed invention of the present application, and actually renders Yerazunis et al. inoperable for its intended purpose.

(B) The Yerazunis et al. Patent Fails as a Proper Primary Reference

In addition to the above, it is respectfully submitted that one who reads and understands Yerazunis et al. would be neither encouraged nor motivated to combine the teachings thereof with that of the Faris patent to form the applicant’s “confidential” viewing system, for the simple reason that the device in Yerazunis et al. is not designed or intended to function as a “spatial” multiplexer, where both the fundamental and inverse image components are displayed simultaneously, albeit spatially shifted relative to one another during the same display frame. To modify Yerazunis et al. as such would run completely contrary to the intended function of the device disclosed therein. It has long since been well established that:

It is not sufficient to constitute an anticipation that the device relied upon might, by modification, be made to accomplish the function performed by the [invention] in

question, if it were not designed by its maker, nor adapted, nor actually used, for the performance of such functions.

Topliff v. Topliff, 145 U.S. 156 (1892).

As discussed above, in Yerazunis et al., the fundamental and inverse image components are necessarily displayed at separate times from one another, in alternating display frames, such that the fundamental image components can be separated for viewing with both eyes using the optical shutter device 140 described and shown therein. To modify Yerazunis et al. to a system utilizing techniques of “spatial” multiplexing requires a complete and significant restructuring of the device to function in a completely different manner. It is respectfully submitted that one skilled in the art would not be motivated to make such dramatic changes in structure and function, even upon reviewing Faris, without the use of impermissible hindsight reconstruction. *W.L. Gore Assocs., supra*.

(C) Amendments to Claims

Notwithstanding the fact that Yerazunis et al. and Faris cannot properly be combined to meet the claimed invention herein, for purposes of making an even more clear distinction in the claims, the Examiner is advised that each of the independent Claims 1, 22, 41 and 54 of the present application have been amended to make it even more clear that the fundamental image and inverse image components are “**simultaneously**” displayed, albeit spatially shifted relative to one another during each display frame. Each of the above independent claims has also been amended to clarify further that the claimed polarized viewing device allows passage and viewing only of said fundamental image components of the fundamental image by “**both eyes simultaneously.**” Therefore, it is believed each of the above independent claims now even more clearly define over the cited prior art, and is accordingly in proper condition for allowance. Since Claims 3-21, 23-40, 42-

53, and 55-56 are all dependant claims of the above independent claims, it also follows that such claims more clearly define over the prior art, and are accordingly in proper condition for allowance.

For all of the foregoing reasons, and in consideration of the amendments submitted herewith, it is believed that the instant application is now in proper condition for allowance, and early reconsideration and allowance thereof is most respectfully requested.

The Examiner is cordially invited to contact the undersigned at the telephone number listed below if such a call would in any way facilitate the allowance of this application.

Respectfully submitted,

Date: March 26, 2010

/Brian F. Schroeder/
Brian F. Schroeder, Reg. No. 32,435
Schroeder & Siegfried, P.A.
15600 Wayzata Boulevard, Suite 200
Wayzata, Minnesota 55391
Phone: 952/476-0580
Fax: 952/476-0585

BFS:bfs